



**BILLING CODE 3510-NK-M**

**DEPARTMENT OF COMMERCE**

**NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION**

Notice of Fee Calculations For Special Use Permits

**AGENCY:** Office of National Marine Sanctuaries (ONMS), National Ocean Service (NOS), National Oceanic and Atmospheric Administration (NOAA).

**ACTION:** Notice; request for public comments.

**SUMMARY:** In accordance with a requirement of Pub. L. 106-513 (16 U.S.C. 1441(b)), NOAA hereby gives public notice of the methods, formulas and rationale for the calculations it will use in order to assess fees associated with special use permits (SUPs).

**DATES:** Comments must be received on or before [INSERT 60 DAYS FROM DATE OF PUBLICATION IN THE FEDERAL REGISTER].

**ADDRESSES:** You may submit comments on this document, identified by NOAA-NOS-2015-0066, by any of the following methods:

- **Electronic Submission:** Submit all electronic public comments via the Federal e-Rulemaking Portal. Go to [www.regulations.gov/#!docketDetail;D=NOAA-NOS-2015-0066](http://www.regulations.gov/#!docketDetail;D=NOAA-NOS-2015-0066), click the "Comment Now!" icon, complete the required fields, and enter or attach your comments.
- **Mail:** Submit all written comments to Matt Nichols, Office of National Marine Sanctuaries, 1305 East West Highway (N/NMS2), 11th floor, Silver Spring, MD 20910.

**Instructions:** Comments sent by any other method, to any other address or individual, or received after the end of the comment period, may not be considered by ONMS. All comments received are a part of the public record and will generally be posted for public viewing on [www.regulations.gov](http://www.regulations.gov) without change. All personal identifying information (e.g., name, address, etc.), confidential business information, or otherwise sensitive information submitted voluntarily by the sender will be publicly accessible. ONMS will accept anonymous comments (enter "N/A" in the required fields if you wish to remain anonymous).

**FOR FURTHER INFORMATION CONTACT:** Matt Nichols, Office of National Marine Sanctuaries, 1305 East West Highway (N/NMS2),

Silver Spring, MD 20910, telephone (301) 713-7262, email  
Matt.Nichols@noaa.gov.

**SUPPLEMENTARY INFORMATION:** This Federal Register document is  
also accessible via the Internet at: [INSERT GPO ACCESS WEB  
ADDRESS - <http://www.access.gpo.gov/>]

## **I. Background**

Congress first granted NOAA the authority to issue SUPs for conducting specific activities in national marine sanctuaries in the 1988 Amendments to the National Marine Sanctuaries Act ("NMSA") (16 U.S.C. 1431 et seq.) (Pub. L. 100-627). The NMSA allows NOAA to establish categories of activities that may be subject to an SUP. The list of applicable categories of activities was last updated in 2013 (78 FR 25957). SUPs may be issued for the placement and recovery of objects on the seabed related to public or private events, or commercial filming; the continued presence of commercial submarine cables; the disposal of cremated human remains; recreational diving near the *USS Monitor*; the deployment of fireworks displays; or the operation of aircraft below the minimum altitude in restricted zones of national marine sanctuaries. Congress also gave NOAA the discretion to assess an SUP fee and laid out the basic components of an SUP fee (16 U.S.C. 1441 (d)). The NMSA states:

(d) Fees-

- (1) Assessment and Collection- The Secretary may assess and collect fees for the conduct of any activity under a permit issued under this section.
- (2) Amount- The amount of the fee under this subsection shall be the equal to the sum of-
  - (A) Costs incurred, or expected to be incurred, by the Secretary in issuing the permit;
  - (B) Costs incurred, or expected to be incurred, by the Secretary as a direct result of the conduct of the activity for which the permit is issued, including costs of monitoring the conduct of the activity; and
  - (C) An amount which represents the fair market value of the use of the sanctuary resource.
- (3) Use of Fees- Amounts collected by the Secretary in the form of fees under this section may be used by the Secretary-
  - (A) For issuing and administering permits under this section; and
  - (B) For expenses of managing national marine sanctuaries.
- (4) Waiver or Reduction of Fees- The Secretary may accept in-kind contributions in lieu of a fee under paragraph (2)(C), or waive or reduce any fee assessed under this subsection for any activity that does not derive profit from the access to or use of sanctuary resources.

The purpose of this notice is to propose standard procedures for assessing fee components associated with the application for and issuance of an SUP. SUPs are generally a small portion of the total number of permits issued by ONMS. However, with the addition of new SUP categories in 2013 and the current and potential expansion of the National Marine Sanctuary System, ONMS may see a rise in the number of applications submitted annually as well as an increase in the complexity of the proposed projects. Due to this, NOAA is

asking for public comment on a set of proposed standard procedures for assessing SUP fees.

## **II. Summary of Fee Calculations**

When an SUP is applied for by an interested party, and ultimately issued by ONMS, the total fee assessed to the applicant will be the sum of the three categories of fees provided for in section 310(d)(2) of the NMSA: administrative costs, implementation and monitoring costs, and fair market value.

### *A. Administrative Costs per 16 U.S.C. 1441(d)(2)(A),*

NOAA proposes to assess a non-refundable \$50 application fee for each SUP application submitted. Administrative costs spent reviewing the permit for sufficiency and suitability would be calculated by multiplying a regional labor rate, derived from the pay rates of ONMS permitting staff and averaged across ONMS regions, by the time spent by staff reviewing each permit application. NOAA will update the rate every year to account for staff changes as well as inflation. Such administrative costs could also include, but are not necessarily limited to, any environmental analyses and consultations associated with evaluating the permit application and issuing the permit; and equipment used in permit review and issuance (e.g., vessels,

dive equipment, vehicles, and general overhead). Equipment includes but is not limited to autonomous underwater vehicles, remotely operated underwater vehicles, and sampling equipment. If equipment is acquired specifically to monitor the permit, the actual cost of the acquisition will be included.

*B. Implementation and Monitoring Costs per 16 U.S.C.*

1441(d)(2)(B),

NOAA may also charge a fee for costs associated with the implementation and monitoring of a permitted activity. Such costs would include staff time (calculated similarly to the labor rate described above), equipment use (including vessels or aircraft to oversee permit implementation), the expenses of monitoring the impacts of a permitted activity, and compliance with the terms and conditions of the permit.

*C. Fair Market Value per 16 U.S.C. 1441(d)(2)(C)):*

To date, NOAA ONMS has assessed fair market value (FMV) fees assessed for an SUP on a case-by-case basis. The SUP category for continued operation and maintenance of submarine cables is the only category that has an established protocol for determining FMV (Aug. 28, 2002; 67 FR 55201). Conducting in-depth economic valuation studies for each SUP application are normally overly burdensome for NOAA and the permit applicant relative to the scope and effects of proposed SUP projects. In

proposing standard FMV fees for the other six SUP categories, NOAA has examined the fees assessed for past SUPs as well as comparable fees assessed by other federal, state, and local agencies for similar activities. NOAA is proposing to adopt a standard FMV fee structure for the remaining SUP categories, and is requesting public comment on the following set of FMV fees:

- 1. The placement and recovery of objects associated with public or private events on non-living substrate of the submerged lands of any national marine sanctuary.** The FMV for this activity would be \$200 per event, based on fee values historically applied at national marine sanctuaries for this activity.
- 2. The placement and recovery of objects related to commercial filming.** With this notice, NOAA would adopt the fee structure below from the National Park Service (NPS), which shares a similar mandate with ONMS to protect natural spaces of national importance. ONMS has determined NPS's broad evaluation methods to be sound and within the intent of ONMS SUPs for commercial filming.

FMV Fee Table for Placement and Recovery of Objects Associated with Commercial Filming Events			
Number of People	Motion Pictures/Videos	Number of People	Still Photography
1-10	\$150/ day	1-10	\$50/ day

11-30	\$250/ day	11-30	\$150/ day
31-49	\$500/ day	Over 30	\$250/ day
Over 50	\$750/ day	-	-

The number of people refers to the cast and/or crew on location within the sanctuary for the commercial filming event, including pre- and post-production.

**3. The continued presence of commercial submarine cables on or within the submerged lands of any national marine**

**sanctuary.** NOAA assesses FMV for submarine cables in national marine sanctuaries based on the findings of its 2002 study entitled "Fair Market Value Analysis for a Fiber Optic Cable Permit in National Marine Sanctuaries" (67 FR 55201). FMV for cables is assessed annually and adjusted according to the consumer price index. NOAA would continue using this methodology for assessing FMV fees for the continued presence of commercial submarine cables.

**4. The disposal of cremated human remains ("cremains") within or into any national marine sanctuary.**

NOAA would waive all fees, including the FMV fee, for private individuals disposing of cremains, but NOAA would assess a \$50 per disposal FMV fee for commercial operators. This value is based on similar practices of state governments, such as the State of Washington, which assesses a \$70 flat fee for



a Cremated Human Remains Disposition Permit for disposal of cremains by airplane, boat, or other disposal methods for businesses.

**5. Recreational diving near the USS *Monitor*.**

NOAA would waive the FMV fee for any SUP issued for recreational diving within Monitor National Marine Sanctuary, given that 1) individual recreational divers do not derive profits from their use of the sanctuary; and 2) permits for commercial recreational divers further the sanctuary's objectives by educating the public about the sanctuary and the historical significance of the *U.S.S. Monitor*.

**6. Fireworks displays.** The FMV for fireworks would be a tiered structure based on the number of fireworks events conducted per calendar year. The fee schedule would be as follows: 1 event per calendar year - \$100; 2-5 events per calendar year - \$300; 6-10 events per calendar year - \$500; 11-20 events per calendar year - \$700.

**7. The operation of aircraft below the minimum altitude in restricted zones of national marine sanctuaries.** The FMV would be \$500 per site/per day. This is an existing value that has been applied historically at national marine sanctuaries for this activity.

### **III. Waiver or Reduction of Fees.**

NOAA may accept in-kind contributions in lieu of a fee, or waive or reduce any fee assessed for any activity that does not derive profit from the access to or use of sanctuary resources. NOAA may consider the benefits of the activity to support the goals and objectives of the sanctuary as an in-kind contribution in lieu of a fee.

### **IV. Request for Comments**

NOAA is requesting comments on the proposed methods for assessment of SUP fees.

### **V. Classification**

#### **A. National Environmental Policy Act**

NOAA has concluded that this action will not have a significant effect, individually or cumulatively, on the human environment. This action is categorically excluded from the requirement to prepare an environmental assessment or environmental impact statement in accordance with Section 6.03c3(i) of NOAA Administrative Order 216-6. Specifically, this action is a notice of an administrative and legal nature. Furthermore, individual permit actions by NOAA will be subject

to additional case-by-case analysis, as required under NEPA, which will be completed as new permit applications are submitted for specific projects and activities.

NOAA also expects that many of these individual actions will also meet the criteria of one or more of the categorical exclusions described in NOAA Administrative Order 216-6 because SUPs cannot be issued for activities that are expected to result in any destruction of, injury to, or loss of any sanctuary resource. However, the SUP authority may at times be used to allow activities that may meet the Council on Environmental Quality's definition of the term ``significant'' despite the lack of apparent environmental impacts. In addition, NOAA may, in certain circumstances, combine its SUP authority with other regulatory authorities to allow activities not described above that may result in environmental impacts and thus require the preparation of an environmental assessment or environmental impact statement. In these situations NOAA will ensure that the appropriate NEPA documentation is prepared prior to taking final action on a permit or making any irretrievable or irreversible commitment of agency resources.

#### B. Paperwork Reduction Act

Notwithstanding any other provisions of the law, no person is required to respond to, nor shall any person be subject to a

penalty for failure to comply with a collection of information subject to the requirements of the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 et seq., unless that collection of information displays a currently valid Office of Management and Budget (OMB) control number. Applications for the SUPs discussed in this notice involve a collection-of information requirement subject to the requirements of the PRA. OMB has approved this collection-of-information requirement under OMB control number 0648-0141.

Dated: July 20, 2015.

John Armor

Acting Director

Office of National Marine Sanctuaries

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